

REMARKS

This amendment is in response to the Final Office Action dated October 27, 2008 (the "Office Action"). Claims 16-26 and 40 are pending in the application. Claims 27-39 have been cancelled without prejudice or disclaimer. Claims 16, 19, 24, and 40 have been amended. Claims 41-42 have been added. No new matter has been added. Support for the claim amendments and new claims can be found at least at paragraphs 0053-0054 of the application.

Claim 16-23 and 25-26 are Allowable

The Office has rejected claims 16-23 and 25-26, under 35 U.S.C. § 103, as being unpatentable over U.S. Published Application No. 2007/0124488 ("Baum") in view of U.S. Patent Application No. 2003/0028890 ("Swart"). Applicants respectfully traverse the rejections.

The cited portions of the above-cited references fail to disclose or suggest the specific combination of claim 16. For example, the cited portions of the above-cited references fail to disclose or suggest maintaining a list of available video content sources in multiple networks, the list including a unique address for a video content source and at least one connection rule for accessing the video content source, as in claim 16.

In contrast to claim 16, the cited portions of Baum describe a switch selectively forwarding packets in response to monitoring information at any level of the OSI Model stack higher than the link layer level (L2). *See* Baum, paragraph 0074, 0090, 0116, 0126. The cited portions of Baum do not disclose that the monitored information in any of the OSI Model layers higher than L2 includes a connection rule for accessing a video content source. Rather, the cited portions of Baum disclose the possible presence of a PPPoE indicator and IP addresses in the layers higher than L2. *See* Baum, paragraphs 0074, 0126. Neither a PPPoE indicator nor an IP address is a connection rule for accessing a video content source. Therefore, the cited portions of Baum fail to disclose or suggest maintaining a list of available video content sources in multiple networks, the list including a unique address for a video content source and at least one connection rule for accessing the video content source, as in claim 16.

In further contrast to claim 16, the cited portions of Swart describe a content delivery server that logs successfully completed deliveries of content to a user. The cited portions of Swart further describe a customer billing server that bills the user if the successfully completed

content delivery requires an additional charge. *See* Swart, paragraphs 0020, 0059, and 0072. The cited portions of Swart contain no disclosure regarding a list of available video content sources. The cited portions of Swart also contain no disclosure regarding connection rules for accessing a video content source. Therefore, the cited portions of Swart fail to disclose or suggest maintaining a list of available video content sources in multiple networks, the list including a unique address for a video content source and at least one connection rule for accessing the video content source, as in claim 16.

Therefore, the cited portions of Baum and Swart, individually or in combination, fail to disclose or suggest at least one element of claim 16. Hence, claim 16 is allowable. Claims 17-23 and 25-26 are allowable, at least by virtue of their dependence from claim 16. Further, the dependent claims recite additional elements not disclosed or suggested by the cited portions of Baum and Swart.

For example, the Office admits that the cited portions of Baum and Swart fail to disclose one or more elements of claim 17, but instead rejects those elements under Official Notice, i.e. reliance on common knowledge in the art or well-known prior art. Applicants respectfully traverse the Official Notice of claim 17 by “specifically pointing out the supposed errors in the examiner’s action.” *MPEP* § 2144.03. Under *MPEP* § 2144.03, Official Notice without documentary evidence should only be taken when the underlying facts are “capable of instant and unquestionable demonstration as being well-known.” Applicants note that the Office Action fails to cite any documentary evidence, and provides no expression of any reason why one having ordinary skill in the art would have been led to modify the above-cited references to arrive at claim 17. Furthermore, Applicants contend that one of skill in the art would not find the elements of claim 17, in the context of the present application, obvious. Therefore, claim 17 is allowable for at least this additional reason. As such, Applicants respectfully request that the Office either provide documents or an Examiner’s Affidavit in support of the rejection, or withdraw the rejection.

As a further example, the Office asserts with respect to claim 18 that “the conversion of voice input to a request for conversion appears inherently include[d], or even if it is not, it would have [been] obvious to one of skill in the art in light of Baum and Swart’s teaching[.]” *See* Office Action, page 3. Applicants respectfully traverse both assertions.

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Here, the Office provides no support for the determination that receiving a spoken directive from a calling party and converting the spoken directive into a request for connection, as in claim 18, necessarily flows from the teachings of Baum and Swart. Therefore, the Office's invocation of the theory of inherency is improper, and Applicants respectfully submit that the rejection based on inherency should either be properly supported or withdrawn. Furthermore, Applicants respectfully disagree with the Office's assertion that the elements of claim 18 would be obvious modifications to the combination of Baum and Swart. The cited portions of Baum disclose a Voice Over IP telephone connection. See Baum, paragraph 0006. The cited portions of Swart disclose delivering a program via telephone lines in response to a request for content made by a television terminal. See Swart, paragraph 0048. The cited portions of Baum and the cited portions of Swart do not contemplate spoken directives or converting anything into a request for connection, as in claim 18. Hence, for at least these additional reasons, claim 18 is allowable.

As a further example, the Office asserts with respect to claim 25 that it is "inherently included...that data indicating a plurality of connection options is sent to the video content source[.]" See Office Action, page 4. Applicants respectfully traverse this assertion. "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Here, the Office provides no support for the determination that each and every element of claim 25 necessarily flows from the cited portions of Baum. Therefore, the Office's invocation of the theory of inherency is improper, and Applicants respectfully submit that the rejection based on inherency should either be properly supported or withdrawn. For at least these additional reasons, claim 25 is allowable.

Claim 24 is Allowable

The Office has rejected claim 24, under 35 U.S.C. § 103, as being unpatentable over Baum in view of Swart. Applicants respectfully traverse the rejection.

The cited portions of the above-cited references fail to disclose or suggest instructions to send data including a plurality of connection options to a video content source and to receive a selection of a point-to-point protocol (PPP) communication link connection option, as in claim 24.

In contrast to claim 24, the cited portions of Baum describe an as-desired Internet access service in which a user can select an Internet service provider (ISP) of their choice. *See* Baum, paragraphs 0124-0125. The cited portions of Baum do not disclose or suggest sending data including of connection options to a video content source. The cited portions of Baum also do not disclose receiving a selection of a PPP communication link option. Instead, the cited portions of Baum disclose that a user is normally connected to an ISP via Ethernet, and that a second PPPoE connection is initiated only when required, such as when the user opens a browser that accesses a wide area network service. *See* Baum, paragraph 0125, 0130. Therefore, the cited portions of Baum fail to disclose or suggest instructions to send data including a plurality of connection options to a video content source and receive a selection of a point-to-point protocol (PPP) communication link connection option, as in claim 24.

In further contrast to claim 24, the cited portions of Swart describe a content delivery server that logs the successful delivery of content to a user and a customer billing server that determines whether the content delivery requires an additional charge to the customer. *See* Swart, paragraphs 0020, 0059, and 0072. The cited portions of Swart do not disclose or suggest sending connection options to a video content source or receiving a selection of a PPP communication link connection option. Therefore, the cited portions of Swart fail to disclose or suggest instructions to send data including a plurality of connection options to a video content source and receive a selection of a point-to-point protocol (PPP) communication link option, as in claim 24.

Therefore, the cited portions of Baum and Swart, individually or in combination, fail to disclose or suggest the specific combination of claim 24. Hence, claim 24 is allowable.

Claim 40 is Allowable

The Office has rejected claim 40, under 35 U.S.C. § 103, as being unpatentable over Baum in view of Swart. Applicants respectfully traverse the rejection.

The cited portions of the above-cited references fail to disclose or suggest sending data including a plurality of connection options to a video content source and receiving a selection of a point-to-point protocol (PPP) communication link connection option, as in claim 40.

In contrast to claim 40, the cited portions of Baum describe an as-desired Internet access service in which a user can select an Internet service provider (ISP) of their choice. *See* Baum, paragraphs 0124-0125. The cited portions of Baum do not disclose or suggest sending data including of connection options to a video content source. The cited portions of Baum also do not disclose receiving a selection of a PPP communication link option. Instead, the cited portions of Baum disclose that a user is normally connected to an ISP via Ethernet, and that a second PPPoE connection is initiated only when required, such as when the user opens a browser that accesses a wide area network service. *See* Baum, paragraph 0125, 0130. Therefore, the cited portions of Baum fail to disclose or suggest instructions to send data including a plurality of connection options to a video content source and receive a selection of a point-to-point protocol (PPP) communication link connection option, as in claim 40.

In further contrast to claim 40, the cited portions of Swart describe a content delivery server that logs the successful delivery of content to a user and a customer billing server that determines whether the content delivery requires an additional charge to the customer. *See* Swart, paragraphs 0020, 0059, and 0072. The cited portions of Swart do not disclose or suggest sending connection options to a video content source or receiving a selection of a PPP communication link connection option. Therefore, the cited portions of Swart fail to disclose or suggest instructions to send data including a plurality of connection options to a video content source and receive a selection of a point-to-point protocol (PPP) communication link option, as in claim 40.

Therefore, the cited portions of Baum and Swart, individually or in combination, fail to disclose or suggest the specific combination of claim 40. Hence, claim 40 is allowable.

New Claim 41 is Allowable

Claim 41 depends from claim 16. As explained above, the cited portions of Baum and Swart fail to disclose or suggest at least one element of claim 16. Therefore, claim 41 is allowable at least by virtue of its dependence from claim 16. Further, claim 41 recites additional elements not disclosed or suggested by the cited portions of Baum and Swart.

For example, the cited portions of Baum and Swart fail to disclose or suggest that a metric associated with communication of an information stream is tracked during communication of the information stream, as in claim 41. The Office admits that the cited portions of Baum do not disclose tracking a metric associated with communication of an information stream, and relies on the cited portions of Swart as disclosing the claim element. *See* Office Action, pages 2-3. In contrast to claim 41, the cited portions of Swart describe a content delivery server that tracks successfully completed content deliveries and a customer billing server bills the user if the successfully completed content delivery requires an additional charge. *See* Swart, paragraphs 0020, 0059, 0072. Neither the content delivery server nor the customer billing server is concerned with how the content is delivered, but rather only that the content is in fact delivered. In the cited portions of Swart, the tracking of successfully completed content deliveries does not occur during communication, but rather only after delivery has been completed, i.e. the content has been received by the user. Therefore, the cited portions of Swart fail to disclose or suggest that a metric associated with communication of an information stream is tracked during communication of the information stream, as in claim 41. Hence, claim 41 is allowable for at least this additional reason.

New Claim 42 is Allowable

Claim 42 depends from claim 24. As explained above, the cited portions of Baum and Swart fail to disclose or suggest at least one element of claim 24. Therefore, claim 42 is allowable at least by virtue of its dependence from claim 24. Further, claim 42 recites additional elements not disclosed or suggested by the cited portions of Baum and Swart.

For example, the cited portions of Baum and Swart fail to disclose or suggest that a metric associated with communication of an information stream is tracked during communication of the information stream, as in claim 42. The Office admits that the cited portions of Baum do not disclose tracking a metric associated with communication of an information stream, and relies on the cited portions of Swart as disclosing the claim element. *See* Office Action, pages 2-3. In contrast to claim 42, the cited portions of Swart describe a content delivery server that tracks successfully completed content deliveries and a customer billing server bills the user if the successfully completed content delivery requires an additional charge. *See* Swart, paragraphs 0020, 0059, 0072. Neither the content delivery server nor the customer

billing server is concerned with how the content is delivered, but rather only that the content is in fact delivered. In the cited portions of Swart, the tracking of successfully completed content deliveries does not occur during communication, but rather only after delivery has been completed, i.e. the content has been received by the user. Therefore, the cited portions of Swart fail to disclose or suggest that a metric associated with communication of an information stream is tracked during communication of the information stream, as in claim 42. Hence, claim 42 is allowable for at least this additional reason.

CONCLUSION

Applicants have pointed out specific features of the claims not disclosed, suggested, or rendered obvious by the cited portions of the references as applied in the Office Action. Accordingly, Applicants respectfully request reconsideration and withdrawal of each of the objections and rejections, as well as an indication of the allowability of each of the pending claims.


Any changes to the claims in this response, which have not been specifically noted to overcome a rejection based upon the cited art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

The Examiner is invited to contact the undersigned attorney at the telephone number listed below if such a call would in any way facilitate allowance of this application.

The Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

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Date


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